

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Company Petition No.7 of 1967**

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In The Matter of M/S Ganga Devi Sugar Mills Ltd.  
(In Voluntary Liquidation)

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**Appearance :**

Official Liquidator : Mr. S. K. Banerjee

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**CORAM: HONOURABLE MR. JUSTICE JAYANANDAN SINGH**

**C.A.V. JUDGMENT**

**Date: 03-05-2013**

**Jayanandan Singh,J:**

This Court has heard the matter on Report No.42 of 2012 of the Official Liquidator. In the Report, the Official Liquidator has, in brief, given the history of the Company and has prayed as follows :

“It is respectfully prayed that Final account prepared and annexed as Annexure-‘C’ be permitted to be got audited and on receipt of the audit report/certificate company be ordered to be dissolved from the date of order.”

Company was initially incorporated as a Private Limited Company on 22.12.1936 with its registered office at Bagaha in the district of West Champaran. Company owned a sugar factory at Bagaha and its object was to manufacture sugar etc. It appears that the Company remained in operation for near about 14 years, but later on, it was not found feasible to run the same any more on account of various factors beyond its control.

Hence, under a Resolution passed on 16.5.1952 in the meeting of Creditors, Contributors and Members, Company went into

voluntary liquidation and one Sri M. P. Singh was appointed as the Liquidator of the Company to initiate the process of winding up. At the time of commencement of winding up proceeding, liabilities of the Company were Rs.8,40,000/- and disbursement till that date was made to the tune of Rs.2,75,409.48. Besides, Company had also filed a suit in the Calcutta High Court in its original side against M/s North Bihar Sugar Mills Ltd., numbered as Suit No.3804 of 1952, in which a claim of Rs.22,56,209.12 p. was made.

This Court by order dated 1.5.1959, on the petition of the Registrar of the Companies, discharged the said Voluntary Liquidator Sri M. P. Singh and appointed another Liquidator, namely, Sri S. P. Sabharwal. The newly appointed Liquidator submitted statement and analysis of balance sheet in which he stated that he could not realize any asset of the Company between 1.7.1966 to 31.12.1966. The half yearly statement of account submitted by him on 9.1.1967 was as follows :

A. Cash in hand of Liquidator	: Rs. 129.17
B. Total payment into Bank including balance at the date of commencement of winding up	: Rs.95,955.76
Total Withdrawn	: <u>Rs.95,954.04</u>
Balance	: Rs. 1.72
C. Amount invested by Liquidator	: NIL
Amount realized from the Bank	: NIL
Cash in hand	: Rs. 130.89

The Liquidator also wrote a letter that he was no longer in a position to spend any amount from his own pocket for his functioning as a Liquidator as the Company had no assets for payment of his remuneration.

Registrar of the Companies filed another petition in the Court for removal of the said Liquidator also on the ground that he did not make real effort for speedy realization of the dues of the Company because of which Liquidation proceeding had remained pending since 1952. Notices were issued on the petition to the Liquidator, who appeared before this Court. After hearing the parties, this Court by order dated 4.11.1968 allowed the petition of the Registrar of Companies, removed the said Liquidator and appointed Official Liquidator as Liquidator of the Company.

Thereafter, Official Liquidator made efforts for holding meeting of Creditors and Contributors thrice in terms of provisions of section 508 of the Companies Act. However, he could not make any progress for want of funds and for want of cooperation from the Creditors and Contributors. Accordingly, he submitted his report dated 27.8.1970, copy of which is annexed as Annexure-A with the present Report under consideration. When the Official Liquidator took charge of the Company under the orders of this Court and took possession of the records of the Company from the voluntary Liquidator, it transpired to him that the only asset of the Company,

which was likely to be available to him, was a sum of Rs.22 lacs and odd which the Company expected to get in the event of its suit being allowed by the Calcutta High Court, which was noticed by this Court in the said order dated 4.11.1968.

Later on, it transpired from Report No.110 of 2011 that the said Suit no.3804 of 1953, filed by the Company for realization of its dues of Rs.22 lacs and odd from M/s North Bihar Sugar Mills Ltd., had been dismissed by a learned single Judge of Calcutta High Court by order dated 27.8.1976 and the review petition filed for review of the said order also stood dismissed by order dated 11.4.1980. It also appeared to this Court that against the said order dated 27.8.1976, an intra court appeal had been filed on 9.6.1977, which was pending. In the circumstances, this Court, by order dated 1.12.2011, directed the Official Liquidator to ascertain as to the fate of the said appeal.

Accordingly, Official Liquidator made enquiries and came to know that the said appeal of the Company stood dismissed as long back as on 5.9.1983 by a Division Bench of Calcutta High Court. It is stated in the Report under consideration that since Company was put under Creditors voluntary winding up, nothing much the Official Liquidator was required to do. It is also stated in the Report that more than 59 years have already passed since the liquidation proceeding started and 43 years have passed since Official Liquidator was appointed as Liquidator. It also appears that after dismissal of the suit

and the appeal by the Calcutta High Court, Company had no asset available and also there are no sufficient fund available with the Company except Rs.28.15p, which is not even sufficient for swearing affidavit to be filed along with final accounts of the Company, which has been drawn and annexed with the Report as Annexure-C. Hence, it is stated in the Report that, after the Official Liquidator took charge of the Company, inspite of his best efforts, he could not hold meeting of the Company and its Creditors for management of the assets and liabilities of the Company and for its final dissolution in terms of provisions of sections 497, 508 and 509 of the Companies Act, 1956, since, after dismissal of the appeal by the Division Bench of Calcutta High Court, there is no asset of the Company available except Rs.28.15p. in the circumstances, it is prayed that this Court may invoke and exercise its inherent powers in terms of Rule 9 of the Company (Courts) Rules, 1959 and compliance of the provisions of section 497, 508 and 509 of the Companies Act may be waived and the Official Liquidator may be permitted to get audited final account annexed as Annexure-C with the Report, and thereafter, Court may direct for dissolution of the Company.

From the statement of accounts, annexed as Annexure-C with the Report, it appears that there has been no transaction in the accounts of the Company, except for withdrawal of an amount of Rs.610/- from the Bank. An amount of Rs.638/- was credited in the

account of the Bank leaving balance of Rs.28.15p only. Prima facie, it appears that the amount of Rs.638/- in the Bank account of the Company was credited on account of accumulation of interest since commencement of winding up proceeding. This Court finds that at the commencement of the proceeding for liquidation, the only asset available to the Company was its dues of Rs.22 lacs and odd against said M/s North Bihar Sugar Mills Ltd. (which amount was outstanding against it out of the sale proceeds of sale of its all units, including the Sugar Mill to it made earlier), for which it had filed suit in the Calcutta High Court on its original side, which claim extinguished with the dismissal of the appeal by the Division Bench against the order of dismissal of the suit. This Court finds that there is no asset of the Company, which may be proceeded with for disbursement to its creditors, if any, in liquidation proceeding. This Court also finds that after taking charge, the then Official Liquidator made attempts to convene meeting of the Company with its Creditors and Contributors repeatedly but with no success. Therefore, the then Official Liquidator could not proceed in the matter further to comply the provisions of sections 497, 508 and 509 of the Companies Act. This Court also finds that till now, no creditor of the Company has come forward before this Court to lay any claim against the Company.

In the circumstances, this Court finds that there is no

option left in this liquidation proceeding than to close the same and direct for dissolution of the Company in exercise of powers under section 481 of the Companies Act, 1956 read with Rule 9 of the Company (Courts) Rules, 1959.

As a result, the Report of the Official Liquidator No.42 of 2012 is accepted and the requirement of compliance with provisions of Sections 497, 508 and 509 of the Companies Act, 1956 as well as requirement of audit of final account annexed as Annexure-C with the said report are dispensed with. The Company stands dissolved in accordance with law with effect from the date of this order. Let the Official Liquidator take follow-up steps as per the law.

The case stands disposed of.

**(Jayanandan Singh, J)**

Pradeep/-